

Statement of Congressman John Conyers, Jr.
Medical Malpractice Markup
March 5, 2003

The bill we have before us today is the most dangerous, one-sided tort reform bill ever considered by the Congress. Far worse than any measure considered during the Contract with America.

The Majority would supersede the law in all 50 states to cap non-economic damages, cap and limit punitive damages, cap attorney's fees for poor victims, shorten the statute of limitations, eliminate joint and several liability, and eliminate collateral source.

The most obvious problem with H.R. 5 is that it does not solve the problem it purports to address. Study after study have shown that draconian caps on damages do not reduce insurance premiums. In a comparison of states that enacted severe tort restrictions in the mid-1980s and those that resisted enacting any tort reform, no correlation was found between tort reform and insurance rates.

For example, data from the 2002 Medical Liability Monitor shows that Florida and Michigan, two states with caps, had the highest average premiums in the country, while Minnesota and Oklahoma, two states without caps, had two of the three lowest average rates in the country. Data from the 2001 Medical Liability Monitor showed that for internal medicine, states with caps on damages had higher premiums than states without caps. For general surgeons, insurance premiums were 2.3% higher in states with caps on damages.

So why are medical malpractice premiums rising? The real culprit is the insurance industry. You don't have to be an economics major to understand that insurers make their money from investment income, which is plummeting right now. During years of high stock market returns and interest rates, malpractice premiums go down. When investment income decreases – and we are in the middle of a four year bear market – the industry responds by sharply increasing premiums and reducing coverage,

creating a 'liability insurance crisis. This boom-bust cycle took place in the 70's and 80's, and its happening again now.

The reality is that nearly 100,000 people die in this country each and every year from medical malpractice. The last thing we need to do is exacerbate this problem, while ignoring the true causes of the medical malpractice crisis in America. Yet that is precisely what the bill before us does.

The fact of the matter is that 5% of all health care professionals are responsible for 54% of all malpractice claims paid – yet this bill does absolutely nothing about patient safety.

The fact of the matter is that the insurance industry is exempt from the antitrust laws – yet this bill does nothing to increase competition.

The fact of the matter is that it is an embarrassment for this Committee to be capping non-economic damages at \$250,000. If you don't believe me, just ask Sherry Keller who testified yesterday. She thought she was getting a simply hysterectomy and ended up a quadriplegic, confined to a wheelchair for the rest of her life. Or ask the family of Jesica Santillan, the young girl who died after receiving the wrong organs from a heart and lung transplant operation at Duke University Hospital.

To deride these individuals as "jackpot" or "lottery winners" as many of the proponents of this legislation have done is absolutely shameful.

Rather than helping doctors and victims, the bill before us pads the pockets of insurance companies, HMOs, and the manufacturers and distributors of defective medical products and pharmaceuticals. And it does so at the expense of innocent victims, particularly women, children, the elderly and the poor. I urge a no vote.